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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

NENG XIONG,

Defendant and Appellant.

F076280

(Super. Ct. No. F16907400)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. David Andrew Gottlieb, Judge.

Jacquelyn Larson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and A. Kay Lauterbach, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Smith, J. and DeSantos, J.

Defendant Neng Xiong contends on appeal the trial court abused its discretion in refusing to allow him to withdraw his plea. He argues that defense counsel was ineffective in failing to inform him of the immigration consequences of his plea, and that he was reasonably unaware his plea would result in deportation. We affirm.

FACTUAL¹ AND PROCEDURAL SUMMARY

Offense and Arrest

Defendant immigrated to the United States from Laos in 1993, when he was 26 years old. He possessed a “green card” and was a lawful permanent resident of the United States.

On December 12, 2016, defendant and his girlfriend, Chue, had gone to bed for the night. Defendant had been drinking. He often talked loudly on a Hmong party line, and Chue did not like it because she could not sleep. She asked defendant to hang up his cell phone. In response, defendant threw his elbow at Chue, causing her to fall out of bed, strike her head on the furniture, and lose consciousness.

Defendant ran into his adult son’s room and told his son that Chue had fallen off the bed and was unconscious. The son ran into their bedroom and found Chue lying on the floor. She was looking up at the ceiling, but she was unresponsive. When the son could not stir her, he called an ambulance and also Chue’s daughter. Chue did not speak, but eventually got up slowly and lay down on the bed. When the daughter came, she took Chue back to her apartment and called the police.

¹ The parties stipulated that the police report formed the factual basis of the plea, but that report is not a part of the record on appeal. Furthermore, no presentence probation report was prepared. For these reasons, we take the facts from in-court statements made by defense counsel and the prosecutor, from the defense investigator’s interview of defendant’s son, and from defendant’s declaration, as do the parties on appeal.

Officers responded and found Chue lying on a couch. Either Chue herself or her daughter told the officers defendant had purposely pushed Chue. The record before us, which does not contain the police report or the officers' body camera recording (both of which were referred to by various people), suggests that conflicting evidence existed as to whether it was Chue or her daughter who told the officers this, and whether defendant purposely or accidentally pushed Chue.

The officers arrested defendant.

On December 14, 2016, the Fresno County District Attorney charged defendant with one count of felony domestic violence (Pen. Code, § 273.5, subd. (a)).² Defendant was represented by a public defender, Samuel Bullock. He was assisted by a Hmong interpreter throughout the proceedings.

At some point, Chue stated she did not want to proceed with the case.

Plea Hearing

On February 1, 2017, defendant pled no contest to misdemeanor domestic violence pursuant to a plea agreement. He was assisted by a Hmong interpreter. The plea form stated: "If I am not a citizen, my change of plea can result in my deportation, exclusion from admission to the United States, and/or a denial of naturalization. Deportation may be mandatory for this offense. I have fully discussed this matter with my attorney and understand the serious immigration consequences of my plea." In the space for other possible consequences of the plea was a large handwritten notation, "deportable." Defendant initialed each line and signed the form.

At the hearing, defense counsel stated: "[F]or the record, I have explained to [defendant] the immigration consequences as well as the result of all my investigation and my analysis of the case." The court then told defendant, "[Defendant], before I accept your plea, there are certain consequences I need to make sure that you fully

² All statutory references are to the Penal Code unless otherwise noted.

understand. If you are not a citizen of the United States, your change of plea could result in your deportation, exclusion from admission or denial of naturalization in the United States. Deportation may be mandatory for this offense. By going through with this change of plea, you're telling the Court that you fully understand the serious immigration consequences of the plea. [¶] Is that correct?" Defendant answered, "Yes." After further discussion, the court found that defendant understood "the nature and consequence of the plea." The trial court suspended imposition of sentence and granted defendant three years' formal probation without any additional time in custody.

On February 21, 2017, defendant was served with a notice of a hearing in removal proceedings on June 21, 2017, in the San Francisco Immigration Court.

On June 1, 2017, defendant obtained new counsel, Pahoua Lor.

Motion to Withdraw the Plea

On June 29, 2017, defendant moved to withdraw his plea pursuant to section 1018 on the ground that he had received ineffective assistance of counsel because Bullock had failed to properly advise him of the immigration consequences of his plea.

In Lor's declaration, she averred that she contacted Bullock and he remembered telling defendant, "Hmong people cannot be deported from the United States, because it is [Bullock's] understanding that countries like Laos and Thailand will not accept Hmong people."

In defendant's declaration, he averred that he was born in Laos, arrived in the United States in 1993 when he was 26 years old, took adult courses to learn English, was consistently employed, and had two daughters and one son. One daughter was married, one daughter was a college student in Minnesota, and his son lived in Fresno. Defendant also averred that Bullock told him the prosecutor was making a great plea offer and he should take it. Defendant agreed to change his plea based on Bullock's representation that it was a good offer and he would not go to jail. Bullock did not discuss defendant's immigration status until the plea hearing when Bullock told defendant there might be

some immigration consequences, and if he was not a citizen, he could be deported. Defendant told Bullock he did not want to be deported. Bullock told him he did not have to worry because Hmong people were not being deported back to Laos or Thailand. Bullock did not explain any other consequences to him. Based on Bullock's representation that everything would be fine, defendant pled guilty and signed the plea form. Bullock never explained that even if defendant were not deported, he could still lose his green card, leaving him without any lawful status. Had Bullock thoroughly explained all the immigration consequences, defendant would not have accepted the offer and would have asked Bullock to negotiate a better offer or take the case to trial.

On July 5, 2017, the prosecution filed a written opposition to the motion, arguing that the plea form and the discussion at the plea hearing both demonstrated that Bullock and the trial court ensured defendant understood the advisements, and refuted defendant's claim that Bullock told him he could not be deported.

Hearing on the Motion

Defendant's Testimony

On July 6, 2017, at the hearing on the motion, defendant testified that Bullock did not inquire whether he was a United States citizen in any of their meetings until the day of the plea. At the plea hearing, Bullock went over the plea form with defendant with the assistance of an interpreter. The interpreter read the plea form to defendant. Defendant told Bullock he was concerned about being deported. Bullock informed defendant that Hmong people were not deported because Laos and Thailand did not accept them. Defendant was content with this and he pled. If Bullock had explained to him that the plea would have immigration consequences no matter what, he would not have pled.

On cross-examination, defendant testified that when the plea form was read to him, "[Bullock] said that if I signed it, there's a possibility they can send me out of the country and take my documents if I was to go somewhere I may not be able to go." And the trial court "said if I pled, there's a right that they can have me deported. But I was

content and relieved that [Bullock]—[Bullock] told me that us Hmong, they won't send us out back to our country, and I was relieved in that.” He repeated, “It's correct what they said, but I was relieved that [Bullock] told me that us Hmong will not be deported and I was content with that. [¶] ... [¶] I knew [the offense was deportable], but I was relieved in [Bullock's] comment saying that us Hmong was [*sic*] not being deported.”

Bullock's Testimony

Bullock testified that he inquired about defendant's immigration status on the day of the plea hearing. He said he filled out the plea form, then handed it to the interpreter and let him read it to defendant. Bullock testified: “I stated to [defendant] that the charge was deportable, meaning that he could be deported, but that frequently Hmong people are not, in fact, deported. That does not change the fact that it's a deportable offense. I then proceeded to make a joke about how Americans screwed up that part of the world.”³ Bullock also explained to defendant the risks of going to trial. Bullock told defendant the investigation had revealed that Chue said defendant pushed her on purpose and she was rendered unconscious. This was the reason the prosecutor refused to dismiss the charge, which Bullock was pushing for. The current offer was as low as the prosecutor was willing to go. Bullock told defendant he still had a fightable case, but if he went to trial, he could end up going to prison. Bullock explained to him that knocking someone out was almost universally considered great bodily injury, which could add three, four, or five additional years to defendant's maximum term of four years. Bullock told defendant it was probably unlikely he would get the maximum of nine years, but it was a real possibility because the injury was substantial. He also told defendant that recanting victims are common, and Chue's recantation would not guarantee him a win at trial. Bullock did not advise defendant to take the deal or to go to trial, but instead asked him “what he wanted to do given all the information and he responded almost without

³ Bullock testified he told Lor the same thing when he spoke to her later.

hesitation that he wanted to take the deal.” “[Defendant] immediately said he wanted an offer.” Defendant did not ask any follow-up questions or request more details about fighting the case, even though Bullock expected him to do so. Due to defendant’s lack of follow-up questions, Bullock assumed the interpreter was interpreting correctly and defendant understood what Bullock had said.

Bullock did not explain to defendant there would be other immigration consequences; nor did Bullock seek the advice of an immigration attorney. Based on his research, Bullock was already aware of the immigration consequences of domestic violence offenses. He knew that a section 273.5 offense, whether a misdemeanor or a felony, was a deportable offense. He tried to get the prosecutor to agree to an immigration-safe plea to a nonviolent offensive contact or false imprisonment, but the prosecutor was unwilling.

Bullock did not feel he led defendant to believe he would not be deported. Bullock explained all the evidence, both good and bad, to defendant. He explained that the offense was a deportable offense and defendant could be deported if the immigration authorities wanted to deport him. But Bullock also explained that, as a practical reality, due to the political situation in Southeast Asia, defendant’s deportation was not a certainty. Bullock testified he told all his clients that “deportable” does not mean they are going to be deported. It just means they can be deported.

Bullock’s advice that frequently Hmongs were not deported was based on the collective advice of other attorneys in the public defender’s office with whom he had spoken about the issue. His office had conducted immigration training with immigration lawyers.

Lor’s Testimony

The parties stipulated that Lor would testify according to her declaration, as follows: “I spoke to [defendant]’s former counsel, Samuel Bullock on May 9, 2017 by phone. I indicated that I would be filing a motion to vacate the criminal proceeding,

because [defendant] was currently in immigration proceedings. I asked if Mr. Bullock was aware that [defendant] was not a US Citizen. Mr. Bullock indicated that he could not recall, but that [he] does recall telling [defendant] that Hmong people cannot be deported from the United States, because it is his understanding that countries like Laos and Thailand will not accept Hmong people. Based on this representation by Mr. Bullock, I can see why [defendant] assumed or believed that there would be no immigration consequences, namely deportation in his matter.”

Argument by Counsel

After the testimony was presented, the following occurred:

“MS. LOR: ... And I can represent to the Court that I’ve been in contact with Mr. Eaton, who represents [defendant] in those immigration proceedings. And currently he’s in removal proceedings. And those proceedings have been continued in light of we are waiting for the outcome of these proceedings. And so he is in imminent danger. He’s currently in removal proceedings.

“THE COURT: Okay. All right. Go ahead.

“MS. LOR: Thank you, Your Honor. You’ve heard from Mr. Bullock, who has candidly admitted that he did not go over the change of plea form. Essentially what he did was he gave the change of plea form to the interpreter and the interpreter—what he understood was the interpreter was going to read and interpret that change of plea form to my client. We are not contesting that Mr. Bullock told my client that [section] 273.5 is a deportable offense. We are not contesting the fact that my client understood that [section] 273.5 is a deportable offense. What we have issue [with] is the fact that Mr. Bullock went one step further and told my client you will not be deported because essentially you are Hmong. Based on that representation—

“THE COURT: I don’t think he said that.

“MS. LOR: I’m summarizing. And I can state, Your Honor, what he said based on his testimony—I mean there’s a conflict. I can tell you that I had a conversation with him. I have prepared my declaration. I put that before the Court. And what he told me during our conversation on May 8 was that he represented to [defendant] that Hmong are not

deportable. Hmongs from Laos and Thailand are not deportable. Mr. Bullock has stated to me—

“THE COURT: I don’t know that that seems consistent with what he said, though. And I don’t think it’s necessarily consistent with what your client said.

“MS. LOR: I believe that is consistent with what my client said. My client testified that Mr. Bullock told him that he didn’t have anything to worry about because Hmongs are not deportable.

“THE COURT: I don’t think those were his exact words either, but go ahead.

“MS. LOR: In any event, Mr. Bullock stated on the record that what he said was that frequently Hmongs cannot be deported. Taking into consideration those words, it’s safe to say—

“THE COURT: He didn’t say ‘cannot.’ Again, I hate to mince words, but if we’re going by what his statement was, it was ‘frequently Hmongs are not deported.’ But he did reiterate each time he said that, that this is a deportable offense.

“MS. LOR: So even if that were the case, Your Honor, that he said this is a deportable offense, he still went on to back that up by saying frequently Hmongs are not deported. Given the situation, given—

“THE COURT: And is that an inaccurate statement?

“MS. LOR: That frequently Hmongs are not deported?

“THE COURT: Right.

“MS. LOR: Is that a[n] inaccurate statement?

“THE COURT: An inaccurate statement.

“MS. LOR: I don’t believe that’s an inaccurate statement. But in light of the circumstances that you have a change of plea form, you’re telling an individual that this is a deportable offense and the individual, based on what my client testified, that he’s saying, look, I don’t want to be deported. And his attorney is telling him, hey, frequently Hmongs are not deported. It’s easy to see how my client could, in his mind, think that his [attorney] is representing to him or telling him there’s not going to be

immigration consequences, you're not going to be deported because Hmongs are not being deported back to Laos and Thailand.

"THE COURT: I guess I'm just asking this, is that—so if we're looking at what the truth is, and we want our attorneys to tell—you know, give accurate representations to their clients, you're not saying that this is an inaccurate representation because—and that's what I'm saying is that what would you have said Mr. Bullock should have said differently if that's not an [in]accurate statement?

"MS. LOR: Under these particular circumstances, I don't think he should have made the statement at all. I think he should have just said this is a deportable offense. If you're not a U.S. citizen, this is a deportable offense.

"THE COURT: And what if [defendant] had asked, 'I've heard that frequently Hmongs are not deported'?

"MS. LOR: You may not physically be removed from the United States, but if you're a green card holder there are other immigration consequences. And if Mr. Bullock was not aware of his immigration consequences, he should have researched the issue or certainly got in touch with an immigration attorney to find out what those immigration consequences are.

"Here's a situation where certainly my client, as I put in the declaration and in our moving papers, may not physically—may not physically be removed from the United States, but the ramification is if he is put in removal proceedings and removed, his green card status will be taken away. He will be here in a stateless condition without paperwork. The minute he leaves the United States, he will not be allowed to return to the United States, Your Honor. There's no representation of that.

"What was told to him is, if we accept the testimony of Mr. Bullock, frequently Hmongs are not deported, in my client's mind I'm not going to be in deportable proceedings. I'm not going to be deported. I don't have to worry about immigration consequences. If you take a look at the opposition that was filed, the opposition stated, look, if Mr. Bullock did make a representation of that sort, we agree with Ms. Lor. It was ineffective assistance of counsel.

"THE COURT: I don't think that was quite the representation. I think it was more along the lines of—I want to get the exact wording because I think that's—the statement was is [*sic*] if he had told [defendant]

that Hmong people cannot be deported, which is a far cry from—because, again, I think that it’s important to recognize that the advice that was given, at least from what counsel is saying and from, you know, what I understand is, that it was accurate advice. And I think that that goes to the issue of the ineffective assistance of counsel.

“I think that there’s more to your argument under Penal Code [s]ection 1018 than whether or not there is ineffective assistance of counsel. And that is that either your client was weighing a lot of other factors and made the decision based upon all those other factors or, you know, he mistakenly or mistook the information that was provided as basically an understanding that there weren’t going to be any immigration consequences. I think that that’s more kind of a realistic idea of, you know, [defendant]’s understanding. And I think the question is is [*sic*] whether or not that’s reasonable or not based upon the information that was provided by Mr. Bullock.

“MS. LOR: So loosely, if we accept that, Your Honor, if we take a look at [*People v. Patterson* (2017) 2 Cal.5th 885 (*Patterson*)]—when you take a look at the analysis of the Patterson court, I believe that based on what Your Honor just stated, it would be reasonable under these circumstances for my client to believe exactly what Your Honor just recited.

“He is in a situation where he was told whatever statement—I mean there [are] different statements as to what was told. Mr. Bullock’s statement, and what my client represented, what I represented during my conversation with Mr. Bullock, and what he’s saying he represented to me. But even under the circumstances, I believe it’s quite reasonable to reach the mistake, if you call it that, of what my client believes was represented to him in that there would be no immigration consequences consistent with the factors set forth in Patterson, Your Honor.”

The prosecutor then argued that Bullock had conducted a timely investigation into the evidence against defendant, and Bullock’s advice to defendant was correct. Thus, defendant had not shown ineffective assistance of counsel. As for any reasonable mistake or ignorance that defendant might have labored under, the prosecutor argued defendant had not met his burden of showing clear and convincing evidence that a mistake or ignorance overcame his exercise of free judgment in this case. The prosecutor explained that defendant claimed Bullock said Hmong people cannot be deported, whereas

Bullock claimed he said Hmongs are frequently not deported. While Bullock's statement might have suggested to defendant that he might not be deported, the plea form and further discussion of the immigration consequences would have confirmed that his offense was a deportable offense.

Lor responded that the court should consider the totality of the circumstances to find that defendant's exercise of judgment was overcome because he believed Bullock was telling him there were going to be no immigration consequences because Hmongs were not being deported back to Laos or Thailand. When the court later inquired of defendant's understanding of the immigration consequences, defendant thought Bullock had already made this assurance to him that he was not going to have any immigration consequences. Lor argued that, based on Bullock's representations to defendant, his belief was reasonable under *Patterson, supra*, 2 Cal.5th 885.

Trial Court's Ruling

The trial court found no ineffective assistance of counsel, concluding both that Bullock's representation was not deficient and that defendant suffered no prejudice. The court explained that Bullock provided defendant with his options, explained the risks of accepting the plea or going forward with trial, advised him of the investigation that had been conducted, and accurately explained the immigration consequences—including that his offense was a deportable offense but frequently Hmongs were not deported. In addition, Bullock had the interpreter go through the plea form in detail, and the court made its usual statements and inquiries regarding defendant's understanding of the immigration consequences. Defendant did not raise any questions and did not hesitate to immediately accept the plea. Defendant weighed his options of potential time in state prison versus potential deportation, and he made his choice with full knowledge of the accurate information he was provided. The case against defendant may not have been the strongest case, but he was offered a misdemeanor and he avoided going to jail or prison. As for whether defendant entered the plea due to mistake or ignorance under section

1018, the court found a lack of clear and convincing evidence to support such a conclusion. The court denied the motion to withdraw the plea.

On September 1, 2017, defendant filed a notice of appeal.

DISCUSSION

Defendant's domestic violence offense was a deportable offense under federal law. (8 U.S.C. § 1227 (a)(2)(E)(i) ["Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable."].) Defendant contends the trial court should have granted his motion to withdraw his plea because Bullock was ineffective in advising him, or in the alternative, because defendant was reasonably unaware his plea would result in deportation. We disagree on both points.

"[W]ithin six months after an order granting probation if entry of judgment is suspended, a trial court may permit a defendant to withdraw a guilty plea for 'good cause shown.' [Citation.] 'Mistake, ignorance or any other factor overcoming the exercise of free judgment is good cause for withdrawal of a guilty plea' under section 1018 [citation], and section 1018 states that its provisions 'shall be liberally construed ... to promote justice.' A defendant seeking to withdraw a guilty plea on grounds of mistake or ignorance must present clear and convincing evidence in support of the claim." (*Patterson, supra*, 2 Cal.5th at p. 894.) "A plea may not be withdrawn simply because the defendant has changed his mind." (*People v. Nance* (1991) 1 Cal.App.4th 1453, 1456.) A defendant may establish good cause to withdraw a plea under section 1018 by showing he was unaware that a conviction for a specific offense would render him subject to mandatory deportation. (*Patterson, supra*, at p. 895; *People v. Superior Court (Giron)* (1974) 11 Cal.3d 793, 798 [defendant may establish good cause to withdraw a plea under section 1018 by showing he was unaware plea would result in deportation; when "accused entered his plea of guilty without knowledge of or reason to suspect

severe collateral consequences, the court could properly conclude that justice required the withdrawal of the plea”].)

We review the trial court’s denial of a section 1018 motion for abuse of discretion. (*Patterson*, *supra*, 2 Cal.5th at p. 894.)

Ineffective Assistance of Counsel

When ineffective assistance of counsel results in a defendant’s decision to plead guilty or no contest, “the defendant has suffered a constitutional violation giving rise to a claim for relief from the guilty plea.” (*In re Alvernaz* (1992) 2 Cal.4th 924, 934.) “The Sixth Amendment guarantees a defendant the effective assistance of counsel at ‘critical stages of a criminal proceeding,’ including when he enters a guilty plea.” (*Lee v. United States* (2017) ___ U.S. ___, ___ [137 S.Ct. 1958, 1964] (*Lee*).) To demonstrate that counsel was constitutionally ineffective, a defendant must show by a preponderance of the evidence that counsel’s representation fell below an objective standard of reasonableness and that he was prejudiced as a result. (*Lee*, *supra*, at p. 1964; *Strickland v. Washington* (1984) 466 U.S. 668, 688, 692; *People v. Centeno* (2014) 60 Cal.4th 659, 674.)

On appeal, “[w]e accord deference to the trial court’s factual determinations if supported by substantial evidence in the record, but exercise our independent judgment in deciding whether the facts demonstrate trial counsel’s deficient performance and resulting prejudice to the defendant.” (*People v. Ogunmowo* (2018) 23 Cal.App.5th 67, 76 (*Ogunmowo*), citing *In re Resendiz* (2001) 25 Cal.4th 230, 249, abrogated on another ground in *Padilla v. Kentucky* (2010) 559 U.S. 356, 369-371 (*Padilla*).)

Deficient performance may be shown when defense counsel fails to inform a defendant of immigration consequences if those consequences are “easily determined” from reading the relevant immigration statutes. (*Padilla*, *supra*, 559 U.S. at pp. 368-369; *People v. Soriano* (1987) 194 Cal.App.3d 1470, 1482 (*Soriano*).) For example, “[a]ffirmatively misadvising a client that he will not face immigration consequences as a

result of a guilty plea in a drug trafficking case—when the law states otherwise—is objectively deficient performance under prevailing professional norms.” (*Ogunmowo, supra*, 23 Cal.App.5th at p. 77.) But “[i]mmigration law can be complex, and it is a legal specialty of its own. Some members of the bar who represent clients facing criminal charges, in either state or federal court or both, may not be well versed in it. There will, therefore, undoubtedly be numerous situations in which the deportation consequences of a particular plea are unclear or uncertain. The duty of the private practitioner in such cases is more limited. When the law is not succinct and straightforward ..., a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences. But when the deportation consequence is truly clear, ... the duty to give correct advice is equally clear.” (*Padilla, supra*, 559 U.S. at p. 369, fn. omitted; *Patterson, supra*, 2 Cal.5th at p. 898 [“there are indeed some cases in which the most that can reasonably be said is that the conviction ‘may’ have adverse immigration consequences”].)

Prejudice in this context is shown when there is a “ ‘reasonable probability that, but for counsel’s errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial.’ ” (*Lee, supra*, 137 S.Ct. at p. 1965; *Patterson, supra*, 2 Cal.5th at p. 901 [defendant must show “ ‘that a reasonable probability exists that, but for counsel’s incompetence, he would not have pled guilty’ [citation] to the charge ... which subjected him to mandatory deportation”].) Under California law, counsel must advise a defendant regarding the risk of immigration consequences, and a defendant may pursue a claim of ineffective assistance based on counsel’s misadvice or lack of advice. (*Padilla, supra*, 559 U.S. at pp. 367-369.) “[T]hat a defendant may have received valid section 1016.5 advisements from the court does not entail that he has received effective assistance of counsel in evaluating or responding to such advisements.”⁴ (*In re Resendiz,*

⁴ This refers to the standard advisement that a trial court must give a defendant pursuant to section 1016.5, subdivision (a): “Prior to acceptance of a plea of guilty or

supra, 25 Cal.4th at p. 241, fn. omitted.) A defendant may reasonably rely on defense counsel’s advice, which is “tailored to the specific facts of [the defendant’s] particular immigration status—over the trial court’s standard warning that deportation might be a possible consequence of a guilty plea for someone who is a noncitizen. Moreover, the court’s warning, given just before the plea is taken, does not afford the same time for ‘ “mature reflection” ’ as a private discussion with a defendant’s own counsel that incorporates the particular circumstances of the defendant’s case. (*Soriano, supra*, 194 Cal.App.3d at pp. 1479, 1481 [granting petition for writ of habeas corpus and vacating judgment based on finding that the defendant was deprived of the effective assistance of counsel in entering his guilty plea where his counsel responded to his inquiry about immigration consequences by either misadvising him that he would not face deportation (the defendant’s version) or providing a pro forma response that his plea might have immigration consequences without conducting any investigation (trial counsel’s version)].)” (*Ogunmowo, supra*, 23 Cal.App.5th at p. 80.)

A defendant’s own assertion that he would not have pled guilty is not sufficient. (*Lee, supra*, 137 S.Ct. at p. 1967.) “Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” (*Ibid.*) Among the many factors the court may consider are “the presence or absence of other plea offers, the seriousness of the charges in relation to the plea bargain, the defendant’s criminal record, the defendant’s priorities in plea bargaining, the defendant’s aversion to immigration consequences, and whether

nolo contendere to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall administer the following advisement on the record to the defendant: [¶] If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.”

the defendant had reason to believe that the charges would allow an immigration-neutral bargain that a court would accept.” (*People v. Martinez* (2013) 57 Cal.4th 555, 568.) The defendant’s probability of success at trial also informs this inquiry, as a defendant who is highly likely to be convicted at trial will be less likely to insist on going to trial. (See *Lee, supra*, at p. 1966.) It may be reasonably probable that the defendant “would have rejected any plea leading to deportation—even if it shaved off prison time—in favor of throwing a ‘Hail Mary’ at trial,” where “avoiding deportation was the determinative factor for [the defendant].” (*Lee, supra*, at p. 1967.)

In the present case, we can decide this issue on the first prong because we conclude Bullock’s representation was not deficient. There was substantial evidence to support the conclusion that Bullock conducted a thorough investigation and properly advised defendant about both the risks of going to trial and the possible immigration consequences of accepting the plea. Bullock attempted to convince the prosecutor to dismiss the charge, but the prosecutor refused because of the seriousness of Chue’s injury. Bullock attempted to negotiate an immigration-safe plea, but the prosecutor again refused. Bullock told defendant his offense was a deportable offense, as the statute provides, and Bullock provided defendant further information to assist him in weighing his risks and making an educated choice between going to trial and accepting the plea—including the information that Hmongs frequently were not deported. This is the version of Bullock’s advice credited by the trial court. (See *People v. Quesada* (1991) 230 Cal.App.3d 525, 533 [trial court must judge credibility when resolving hearing under section 1018]; see also *People v. Smith* (1993) 6 Cal.4th 684, 696 [trial court permitted to accept counsel’s version of events during disputed hearing involving competency of representation].) Furthermore, there was no evidence that Bullock’s advice on the deportation of Hmongs was misadvice. Indeed, Lor admitted the advice was not inaccurate. Bullock’s advice regarding the immigration consequences of defendant’s plea was adequate.

We briefly address defendant's argument that because Bullock added the information that frequently Hmongs were not deported, his advice was analogous to the inadequate advice given in *Soriano*, *supra*, 194 Cal.App.3d. 1470. Defendant explains that Bullock's advice was not meaningful under *Soriano* because it "undercut the very clear and real danger of deportation," and defendant took it to mean that Hmongs were not being deported.

In *Soriano*, defense counsel gave the defendant "only a pro forma caution" that his guilty plea might have immigration consequences, and the defendant claimed he was unaware he was exposing himself to deportation. (*Id.* at p. 1482.) Defense counsel testified she was not aware of the immigration consequences of the defendant's guilty plea and had she known of the immigration impact, she would have " 'tried to negotiate the case differently.' " (*Id.* at p. 1480.)

Here, Bullock's advice was not merely a pro forma caution. Instead, his advice addressed the reality that defendant's decision was not a black-and-white one, even though defendant surely would have preferred it to be. The additional information regarding the frequency of Hmongs being deported made the advice more, not less, meaningful—even if it made the decision a harder one. Defendant argues that this additional information robbed Bullock's advice of any "real world application as to the actual risk of whether [defendant] would be deported as a result of his plea." On the contrary, in defendant's real world, the additional information did not reduce the value of the advice or render it inapplicable to defendant's risk assessment; instead, the information increased the value of the advice by exposing the real-world shades of grey defendant was required to consider in making his decision. Bullock was obligated to provide whatever accurate information he possessed regarding defendant's risk of deportation. The decision to accept that risk—even if the gamble ultimately fails—was defendant's decision to make.

We address just one more of defendant’s meritless arguments on this issue—that Bullock did not explain to defendant what “deportable” meant. The record demonstrates that defendant had the constant assistance of a certified Hmong interpreter who presumably translated “deportable” into the Hmong language. Moreover, the suggestion that defendant did not understand the word is belied by his own testimony at the hearing in which he discussed—with facility—the concept of deportation. He explained his concerns about deportation, what Bullock told him about deportation, and how he interpreted those comments as affecting his own risk of deportation. We note that the interpreter successfully translated both the questions asked of defendant and his testimony at that hearing.⁵

Mistake or Ignorance

Even if defense counsel did not provide ineffective assistance, defendant could nevertheless have been unaware of the possible immigration consequences of his plea and entered into the plea because of mistake or ignorance. (§ 1018; *Patterson, supra*, 2 Cal.5th at p. 894.) But the trial court concluded this was not the case. We conclude the same evidence we have discussed above constituted substantial evidence to support the trial court’s conclusion defendant was aware of the possible immigration consequences of his plea and did not enter into the plea because of mistake or ignorance. The record shows that Bullock correctly informed defendant that his offense was deportable, but that deportation was not a certainty, as we have explained. Defendant’s claim that he did not understand these facts or even the meaning of the words is not supported by the record. Defendant could not have been unaware he was exposing himself to the risk of

⁵ Defendant also argues Bullock’s advice was not founded on adequate investigation of federal immigration law; Bullock did not explain the alternatives to accepting the plea, such as taking time to attempt to get an immigration-safe plea; and at best, Bullock’s advice was a pro forma caution as in *Soriano*, and, at worst, it was direct misinformation. Each of these arguments fails.

deportation. Bullock directly told him he was. Bullock was fully aware that the offense was deportable and he made that fact clear to defendant. Defendant himself testified he knew the offense was deportable. Defendant failed to show he was unaware his conviction would render him subject to deportation.

In sum, the trial court did not abuse its discretion in denying the motion to withdraw the plea.

DISPOSITION

The order denying defendant's motion to withdraw the plea is affirmed.